

BOARD OF SELECTMEN
MINUTES
MARCH 24, 2008

Pursuant to notice duly filed with the Town Clerk, a meeting of the Board of Selectmen was held at 7 p.m. in the Hearing Room.

Present were Margaret B. Briggs, Chair; Virginia McIntyre; Anne D. Shapiro; and Gregory P. Howes, Clerk. Also present was Christopher Whelan, Town Manager.

CONSENT AGENDA

- Town Accountant's Warrants
- One Day Special All Alcohol License: Concord Chamber of Commerce Tastes of Concord May 1 from 6PM – 9PM at 300 Baker Ave.

Upon a Motion duly made and Seconded, the Board UNANIMOUSLY

VOTED: to approve the Consent Agenda as read.

Ms. Briggs announced that Mr. Black has had surgery that will require him to take a leave of absence for the next 4-6 weeks. The Board wished Stan well in his recuperation.

TOWN MANAGER'S REPORT

1. The Board has voted to celebrate Earth Hour on March 29 from 8-9 PM. This is an opportunity for the community to reduce its use of electric power and increase its environmental awareness.
2. The Board of Assessors is reviewing the recent Supreme Judicial Court decision that enables communities to tax the wires and poles of public utilities.
3. There will be pilot program to change the traffic flow at Monument St. starting in June. The smaller flagpole rotary will function as a full rotary. Traffic from Lowell Road will be required to yield to traffic in the rotary turning onto Main Street. The option of closing the smaller rotary is a solution to the accident history of the site.
4. The Town has been notified by the State Treasurer that all lottery agents are now required to offer Keno tickets.
5. Concord Clean-up Week will be April 5 through 13. Residents and organizations interested in helping tidy up the streetscape can pick up bags now. Concord Public Works will pick up filled bags from the roadside. Concord Public Works has begun its spring street sweeping program. While it is still early, picking up sand now could keep it out of the run-off flowing into catch basins.
6. The bid opening for general contractors interested in Willard School construction has been delayed until April 1 at 2PM at the Town House. The bids for the sub-contractors have been opened and are favorable.
7. New Ch. 40B regulations that the Zoning Board of Appeals is required to adopt have been issued. It is not yet clear whether current projects being reviewed are grandfathered and the regulations would cover new projects.
8. A new Commissioner for the Department of Corrections has been appointed. There will be an opportunity to meet him at the TriCon Church on April 9 at 7PM.
9. Mr. Whelan will meet with Stan Uscovis from Verizon on March 25 concerning providing FiOS in Concord.

POLICY ON OUTSIDE EMPLOYMENT FOR TOWN EMPLOYEES

Ms. Shapiro asked what policies exist, whether department heads were able to engage in such employment, whether there was ever the expectation that full time employment with the Town prohibited outside employment, whether the Town would hold a higher standard than simple compliance with Chapter 23, especially with the enterprise fund businesses.

Consent Agenda

Town Manager's
Report

Outside Employment

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Mr. Whelan stated that there are no prohibitions on activities in employees' private lives. Many own businesses such as painting, construction, or landscaping; employees are free to engage outside of business hours with the expectation that there will be no activities that lead to a potential or real conflict of interest.

POLICY ON DISPOSITION OF TOWN ASSETS

Ms. Shapiro noted that the Town Charter empowers the Town Manager with responsibility for the property of the Town. She stated that it appears to be the sole responsibility of the Town Manager and she questioned the wisdom of this policy, especially with assets as large as the \$35MM power contract or varied as soil from a construction project.

Mr. Whelan stated that he would not anticipate that the Light Plant would be selling assets, but would likely offer services at a competitive bid, such as telecommunications. Mr. Whelan stated that the Board of Selectmen is solely responsible for the real estate of the Town. However, the Assistant Town Manager coordinates the rentals of property, often pursuant to a vote of Town Meeting. i.e., cell tower location and leases. In addition, there are often supplies that are surplus to Town needs that will be disposed of through a sale or as trade-in for newer equipment. This is managed by the Finance Department under the requirements of Chapter 30B for acquisition and disposition of assets above the value of \$5,000.

BOND SALE

Town Finance Director Tony Logalbo was present to inform the Board of a recent bond issuance. Seven bids were received. The low bid on a bond of \$6,301,000 was by First Southwest Company at 3.01% true interest cost. The bond sale will finance a number of projects approved by Town Meeting votes.

For purposes of budgeting, it was estimated that the Town would pay 4% interest on the bond. The 1% less is good, but the Town is also earning interest at a lower rate on other matters, which is not good.

Moody's reaffirmed Concord's Aaa credit rating as part of this process. The bonds are not "qualified" a designation reserved for tax-exempt issuers who issue no more than \$10MM in a calendar year and which provides 10 basis points advantage.

Upon a Motion duly made and Seconded, the Board UNANIMOUSLY

VOTED: to approve and confirm the sale of the \$6,301,000 General Obligation Municipal Purpose Loan of 2008 Bonds of the Town dated April 1, 2008 (the "Bonds"), to First Southwest Company at the price of \$6,372,024.80 and accrued interest. The Bonds shall be payable on April 1 of the years and in the principal amounts and bear interest at the respective rates, as follows:

Year	Amount	Interest Rate	Year	Amount	Interest Rate
2009	\$926,000	3.00%	2014	\$555,000	3.00%
2010	720,000	3.00	2015	540,000	3.25
2011	720,000	3.00	2016	540,000	3.50
2012	720,000	3.00	2017	520,000	3.625
2013	710,000	3.00	2018	350,000	3.75

Further voted that in connection with the marketing and sale of the Bonds, the preparation and distribution of a Notice of Sale and Preliminary Official Statement dated March 11, 2008 and a final Official Statement dated March 20, 2008, each in such form as may be approved by the Town Finance Director and Treasurer, be and hereby are ratified, confirmed, approved and adopted.

Further voted that the consent to the financial advisor bidding for the Bonds, as executed prior to the bidding for the Bonds, is hereby confirmed.

Town Assets

Bond Sale

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Further voted that the Town Finance Director and Treasurer and the Board of Selectmen be, and hereby are, authorized to execute and deliver a continuing disclosure undertaking in compliance with SEC Rule 15c2-12 in such form as may be approved by bond counsel to the Town, which undertaking shall be incorporated by reference in the Bonds for the benefit of the holders of the Bonds from time to time.

Further voted that each member of the Board of Selectmen, the Town Clerk and the Town Finance Director and Treasurer be and hereby are, authorized to take any and all such actions, and execute and deliver such certificates, receipts or other documents as may be determined by them, or any of them, to be necessary or convenient to carry into effect the provisions of the foregoing votes.

STRAWBERRY HILL ROAD LAND CLOSING

Town Manager Chris Whelan provided a vote, the deed, and first amendment for the sale of the Strawberry Hill Road Land for the Board's approval. The documents have been reviewed by Counsel and found to be consistent with the vote of Town Meeting and the Purchase and Sale Agreement with Bentley Building Corporation. The proceeds from the sale will be used to retire the \$2.5MM debt on the Burke Land.

Upon a Motion duly made and Seconded, the Board UNANIMOUSLY

- VOTED:**
- a) To approve and execute the Amendment to Purchase and Sale Agreement dated as of March 24, 2008 and attached hereto in order to adjust the deadline for the completion of the Conservation Restriction and Affordable Housing Restriction(s) to be placed on portions of the Property in accordance with the Town permits and approvals for the development on the Property and to provide for a closing cost credit to the buyer for trash and debris removal
 - b) To approve and execute the Quitclaim Deed from the Town of Concord to Bentley Building Corp. in accordance with the Purchase and Sale Agreement dated March 22, 2007, as amended, for the conveyance of the Property from the Town to Bentley Building Corp. (the "Purchase and Sale Agreement"), which Quitclaim Deed is attached hereto, in order to accomplish the intent of Article 32 of the 2006 Concord Annual Town Meeting.
 - c) To authorize Christopher Whelan, Town Manager of the Town of Concord, to take all actions on behalf of the Town that are reasonably necessary, in the judgment of Mr. Whelan, to complete the transfer of the Property from the Town to Bentley Building Corp. in accordance with the Purchase and Sale Agreement, including without limitation signing applicable closing forms and an applicable settlement statement.

RECESS

Upon a Motion duly made and Seconded, the Board UNANIMOUSLY

- VOTED:** to recess the Board Meeting at 7:35PM and to resume at the conclusion of the Enterprise Fund Hearing.

At 9:15PM, the meeting resumed. Town Moderator Ned Perry stated that he had identified Articles 27, 28, 29, and 30 as high interest articles that would be considered as the first business on Tuesday, the second night of Town Meeting. He stated that any amendments to these articles should be submitted to the Town Manager's Office by noon of April 25 so that he has an opportunity to review and bring some logical order to the deliberations. Any amendments from the floor will not be considered until all others have been covered.

Strawberry Hill Road

Recess

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The Moderator reported that Articles 13, 14, 15, 16, 18, 19, 20, 21, 47 and 48 are on the Consent Agenda. This mechanism allows the Town to act quickly on those articles that are routine and non-controversial. Each year the Moderator holds one of the Enterprise Fund budgets off the Consent Agenda so that the Meeting has an opportunity to renew its understanding of the activities of that fund. This year it will be the solid waste special revenue fund.

TOWN MEETING ARTICLES

Town Meeting Articles

#23. The Town Manager reported that he recommends that the Space Needs Study is not moved at this time. Instead, there will be an internal evaluation to begin to develop a plan using staff expertise without an appropriation.

Upon a Motion duly made and Seconded, the Board UNANIMOUSLY
VOTED: to recommend No Motion Expected on Article 23.

#27. Discussion on the Bruce Freeman Rail Trail Article included: importance of getting the schematic design to MassHighway for its consideration before the Town can go forward with a more detailed plan; the committee has worked for two years and ensured that the final recommendation includes many compromises; it is hoped that many ideas heard at the hearing could be included in the Rail Trail; at this stage in the planning, the intersection of the trail with the West Concord crossing and the Prison Rotary is not designed; neither the MBTA nor MassHighway have defined or ruled out options in these areas; the \$160,000 appropriated for the rail trail design study does not include the full 3.5 miles of the trail within Concord; there is some talk that the Fitchburg line could absorb Worcester line traffic for express travel to Boston; the best resolution for the Town may not meet the personal preferences of individuals;

The Committee has worked hard to ensure fairness, good process, attention to safety issues, attention to abutter issues, and the economics of the trail; questions remain, as they should at this early stage of design; it is important for Town Meeting to deliberate of the range of issues included in Articles 27 through 30; despite anxieties, the rail trail will be a huge asset that residents can enjoy; Town Meeting will deliberate on the appropriate surface – paved, stone dust, or a combination; after input from MassHighway, the Town will be able to fine tune the design and bring it back to Town Meeting for further consideration;

Upon a Motion duly made and Seconded, the Board

VOTED: to recommend Affirmative Action on Article 27 (yes-3, no-Shapiro)

#28. Discussion on a Better Rail Trail included: the petitioner proposes a separate design and an additional \$10,000 raised from donations to amend the consultant's report; significant changes are included in the proposal; compelling points include stone dust on the length of the trail and a defined footprint; some portions of the proposal are premature; the proposed West Concord crossing would scar an intact village; support for a rural aspect is a plus; by not supplying a plan, the petitioner did not allow public scrutiny of his ideas; the 3.5 miles of the trail might include fiber optic cable that is a potential revenue stream for the Town.

Upon a Motion duly made and Seconded, the Board UNANIMOUSLY

VOTED: to recommend No Action on Article 28.

#29. Discussion on Access for All included: a fully paved trail while good for accessibility does not respond to compromises developed during the Committee deliberation; no trail will accommodate the needs of every potential user; this is one more valuable vision for Town Meeting to consider; the trail from Concord to Lowell will be paved.

Upon a Motion duly made and Seconded, the Board UNANIMOUSLY

VOTED: to recommend No Action on Article 29.

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#30. Discussion on Funding for Continuing Work on the trail included: this began as a petition article placeholder and has been adopted by the Bruce Freeman Rail Trail Committee; the likely sum required in this Article is no more than \$50,000 from Free Cash; it is unfortunate that the original appropriation was not sufficient; as this matter included some controversy, there was more public process required.

Upon a Motion duly made and Seconded, the Board

VOTED: to recommend Affirmative Action on Article 30. (yes-3, no-Shapiro)

#35. The Board had considered this article regarding the inclusion of housing in Town acquisitions of conservation land and recommended No Action. The Petitioners have submitted amended language in response to comments collected at the Hearing. Discussion included: conservation is removed from the proposal such that housing will be a consideration in every land acquisition; there was no intended slap at the Town's process to date, but an appreciation for the Town's efforts to create affordable housing; the new language will provide a choice that has not been present; landowners will be warned that the Town will consider potential housing opportunities in each acquisition; the Board urged petitioners to include the notion that this proposal becomes active when the use of Town funds is anticipated and Mr. Terry agreed; this is not an effort to tie the hands of the Town; this is an effort to inform potential sellers that housing is one of the goals of the Town.

In some instances housing might not be an appropriate use; the housing representative in discussion with the Board is likely to be from the Concord Housing Development Corporation; the language is much improved; there must be recognition that each opportunity is unique.

Petitioner Terry Rothermel stated that the shorter version of the article includes the notion of when the proposal is operative and what its purpose is. This proposal is for Town acquisitions and does not include private acquisitions. In his opinion, it is crucial to have housing interests involved before there is consideration of probable use of a parcel. It was pointed out that open space advocates are often the ones to bring a potential acquisition to the Town's attention for a mixed use. He stated that open space advocates have been very successful in their cause and that the Board includes that interest in its deliberations, often due to successful fundraising. He stated that housing advocates deserve the same place at the table. Much of the discussion regarding land acquisition is done in executive session, which would limit the housing advocate's ability to divulge information to others.

Upon a Motion duly made and Seconded, the Board

VOTED: to recommend Affirmative Action on the amended Article 35 (yes-3, no-McIntyre).

#31, 32, and 33 the Community Preservation Articles.

Upon a Motion duly made and Seconded, the Board UNANIMOUSLY

VOTED: to recommend Affirmative Action on Articles 31, 32, and 33.

Upon the request of Ms. Shapiro, the Board reconsidered the Enterprise Fund Articles and UNANIMOUSLY

VOTED: to recommend Affirmative Action on Articles 14, 15, 17, 18, 19, 20, 21.

CITIZEN COMMENT

Julie Melbin of Stone Root Lane noted that volunteers for the spring Drop Off Day can register on line. She also stated that it is her understanding that all components of the 25% design must be included from the beginning and vegetative screening near White Pond is not. She is also concerned that exclusions may make the Town responsible to pay for those items.

Ms. Melbin also commented on enforcement of No Parking signs. She was directed to bring the matter to the Town Manager's attention.

MISCELLANEOUS/CORRESPONDENCE

Citizen Comment

Misc./Corres.

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1. Mr. Howes reported that he is working with Ms. Loynd on the Long Range Plan Update article and shared a draft with the Board. Responses should be directed to Ms. Loynd. It is possible that the Article may not be moved.

COMMITTEE NOMINATIONS

Ms. McIntyre nominated Patricia MacAlpine and Walter Miles to the Hugh Cargill Trust Committee for terms to expire May 31, 2011.

Nominations

ADJOURNMENT

On a motion duly made and seconded, it was:

VOTED: To adjourn the Open Session and to conclude business for the evening.

Adjourn

Anne D. Shapiro	Aye
Virginia McIntyre	Aye
Gregory P. Howes	Aye
Margaret B. Briggs	Aye

The meeting adjourned at 10:40 p.m.

Respectfully submitted,

Gregory P. Howes, Clerk